rents paid by the sub-tenants. I think that is crystal clear from the wording of the section itself. It says "where the tenant, having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents" then follow the words which as if to emphasize that they qualify the word 'rent' are contained in brackets "(exclusive of any payment by the tenant for .... services)". The words "in respect of such sub-letting" if they have any meaning at all clearly govern everything that follows them, that is to say, the word rent as qualified by the words in brackets."

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Conaghan, Wreford & Thornton; S. Seenivasagam & Sons.*

PUBLIC PROSECUTOR v. CHANG WAN SENG.

[A. Cr. J. (Wilson J.) August 23, 1954]

[K. L. — Criminal Appeal No. 59 of 1954]

Penal Code, s. 304A — Negligence — Particulars of negligence — Accused not entitled to such particulars.

A request for particulars of negligence under s. 304A of the Penal Code is tantamount to a request for particulars of the evidence which the prosecution proposed to call and therefore an accused is not entitled to such particulars. When a person is charged with murder it is not necessary to specify in the charge the poison or weapon used. Where an accused is involved in a collision he must be in a position to instruct his Counsel as to his version of how the collision took place and that is all that Counsel needs in order to conduct the defence.

CRIMINAL APPEAL.

E. Brown (Federal Counsel) for the appellant.

Ernest Jeff for the respondent.

Cur. Adv. Vult.

Wilson J. : — In this case the accused was charged with the following offence:—

"That you on 5.3.54 at about 5.20 p.m. at Birch Road/Shaw Road, Kuala Lumpur, caused the death of one, Yap Yong How, by doing a negligent act not amounting to culpable homicide, to wit by driving motor lorry N. 3094 negligently and thereby collided head-on into motor car BB. 7811, and that you have thereby committed an offence punishable under s. 304A Cap. 45 of the Penal Code."

When the case was called, Counsel for the accused complained that, although he had asked for particulars of negligence these had not been supplied. The Court thereupon ordered particulars of negligence to be served upon the accused or his Counsel within two weeks. In his grounds for order, the learned President states that as the accused was charged with doing a negligent act resulting in death, the act or acts complained of should be disclosed in the charge.

In my opinion, a request for particulars of negligence was tantamount to a request for particulars of the evidence which the prosecution proposed to call, and I do not think that the accused was entitled to such particulars. In my opinion, the charge contained such particulars as are required by section 153 of the Criminal Procedure Code and I do not think section 154 of the Criminal Procedure Code has any application in this case. When a person is charged with murder it is not usual, and certainly not necessary, to specify in the charge the poison or weapon used. I cannot say that the accused was in any way prejudiced by a failure to supply him with the particulars of the evidence on which the prosecution relied. If he was not involved in the collision as alleged, then his defence is simple. If he was involved in the collision he must be in a position to instruct his Counsel as to his version of how the collision took place and that is all that Counsel needs in order to conduct the defence.

The appeal is allowed and the case remitted to the President of the Sessions Court for trial.

Appeal allowed.

HOOI MOON v. AR. K. SUPPIAH CHETTIAR.

[A. C. J. (Spenser Wilkinson J.) June 9, 1954]

[Penang — Civil Appeal No. 1 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(j) — Claim for possession — Tenant receiving excessive rent — Relevant time of tenant so receiving.

The landlord in this case claimed possession on the ground that the tenant "receives" rent in excess of 75% of the rent paid by him. Before ejectment proceedings were started but subsequent to a notice to quit the tenant had reduced the rent to within the legal maximum. It was argued that the words "receives . . . rent" in s. 13(1)(j) related to the time when ejectment proceedings were started.

Held: if at the date when the contractual tenancy terminated the tenant is receiving rent in excess 75% of the main rent, the conditions of s. 13(1)(j) are fulfilled and the landlord is entitled to possession.

Cases referred to:—

(1) *K. S. Mohamed Ismail v. Choo Pin, ante* p. 183.

(2) *Woon Guat Chin v. Lim Sian Poon, ante* p. 184.

CIVIL APPEAL from Sessions Court.

Ong Huck Lim for the appellant.

G. H. Conaghan for the respondent.

Cur. Adv. Vult.

Spenser Wilkinson J. : — This was an appeal against the decision of the President of the Sessions Court giving possession of certain premises occupied by the defendant to the plaintiff.

The ground upon which the order for possession was made was that the defendant had received from his sub-tenant rent in excess of seventy-five per cent. of

the rent paid to the landlord within the meaning of section 13(1)(j) of the Control of Rent Ordinance, 1948. This provision reads as follows:—

"13. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

(j) where the tenant, having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents (exclusive of any payment by the tenant for Municipal or Town Board services) which exceed in the aggregate seventy-five per cent. of the rent paid by the tenant."

It is not in dispute that up till the 15th September, 1952 the tenant was receiving excessive rent from the sub-tenant. On the 15th September, 1952, however, the tenant reduced the rent to a figure within the legal maximum. This was done just before the order of the Rent Board giving the plaintiff permission to take ejectment proceedings. The proceedings in the Sessions Court commenced on the 8th December, 1952 after the rent had been reduced. The notice to quit was given in May, 1952 and expired on the 30th June, 1952.

Mr. Ong Huck Lim on behalf of the appellant argued that the words "receives ... rents" in the sub-section in question relates to the time when the ejectment proceedings commenced, and as at the time when these proceedings were commenced the tenant was not receiving an excessive rent an order for possession ought not to have been given.

In the case of *K. S. Mohamed Ismail v. Choo Pin*[1], Briggs J. held that the test is whether at the time of the determination of the tenancy it was open to the landlord to take proceedings for ejectment on the footing of paragraph (j) to section 13(1) of the Ordinance.

In *Woon Guat Chin v. Lim Sian Poon*[2], Thomson J. said:—

"Construing paragraph (j) strictly it seems to me that it is contravened if at any time, or, at any rate, any time after the commencement of the Ordinance, the tenant has received rents amounting to more than seventy-five per cent. paid by him to the landlord."

If the provisions of paragraph (j) are construed in the manner suggested by Mr. Ong Huck Lim the result would be as far as I can see that a tenant could charge his sub-tenants as much rent as he chose providing that he reduced the rent before ejectment proceedings had actually been started against him in Court. Where a statute is not clear it is permissible to look at the possible results of different constructions in order to see what the intention of the Legislature was. In my opinion it could not have been the intention of the Legislature to allow a tenant to make a profit out of his sub-tenants and then to retain that profit by the simple expedient of reducing the rent when he was threatened by the landlord with ejectment.

I think the principle indicated by the judgment of Briggs J. referred to above is the correct one and that if at the date when the contractual tenancy terminates the tenant is receiving rent in excess of seventy-five per cent. of the main rent the conditions of paragraph (j) to section 13(1) are fulfilled, and the landlord is entitled to possession. In other words if, up to the time when the notice to quit terminates, the tenant has been receiving excessive rent he does not become a statutory tenant under section 16 of the Ordinance.

For these reasons I am of opinion that the decision of the learned President was right and the appeal must, therefore be dismissed with costs.

Appeal dismissed.

Solicitors: *Ong Huck Lim; Conaghan, Wreford & Thornton.*

THAM SAI MOOI (f) v. M. S. THAVER

[A. C. J. (Wilson J.) August 6, 1954]

[K. L.—Civil Appeal No. 12 of 1954]

Landlord and tenant—Control of Rent Ordinance, 1948, s. 13(1)(k)—Breach of law in force relating to Municipalities—Claim for possession—No jurisdiction of Court to exercise discretion unless expressly required to consider "reasonableness".

The plaintiff (appellant) claimed for possession of certain premises under s. 13(1)(k) of the Control of Rent Ordinance, 1948, the defendant (respondent) having been convicted of offences in breach of the law in force relating to Municipalities. He had been served with a notice to quit. The learned President of the Sessions Court held that there was a general discretion in the Court, and also a particular discretion arising from the negative and prohibitory phraseology of the opening lines of s. 13(1), and gave judgment for the defendant with costs.

Held on appeal: the trial Court has no jurisdiction to exercise a discretion unless it is expressly required to consider the question of reasonableness.

Cases referred to:—

(1) *Chen Chi Ya v. K. Nagappan* (1949) M.L.J. 164.

(2) *V. E. A. Mohaideen v. T. Mohamed* (1952) M.L.J. 209.

(3) *T. Mohamed v. V. E. A. Mohaideen* (F.M. Civil Appeal No. 20 of 1952), noted in this issue at p. xxv.

(4) *Chen Chi Wei v. Khoh Keng Chong* (1951) M.L.J. 204.

CIVIL APPEAL from Sessions Court.

K. C. Chia for the appellant.

P. P. Nair for the respondent.